IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.472 OF 1994

with

CIVIL REVISION APPLICATION NO.473 OF 1994

with

CIVIL REVISION APPLICATION NO.474 OF 1994

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

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RANCHHODBHAI JINABHAI THAKORE

VERSUS

SHRI MAGANBHAI GHEMABHAI BIN KHODABHAI SOLANKI

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Appearance:

MR DC DAVE for petitioners

MR NS DESAI for respondents

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Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 23/03/2000

C.A.V. JUDGMENT

#. As all these revision applications arise from one suit and the parties are common, the same are taken up for hearing together and are being disposed of by this common orer. In fact, three different applications filed by petitioners in the suit came to be rejected under the impugned orders and hence these three revision applications.

#. The facts of the case, briefly are to be stated. The plaintiff-respondent No.1, hereinafter referred to as the plaintiff, filed Regular Civil Suit No.194 of 1990 against the petitioners and respondents No.2 to 4, hereinafter referred to as defendants, in the court of Civil Judge (J.D.), Anand, interalia praying therein for declaration and permanent injunction to the effect that the suit land belongs to the exclusive ownership and possession of the plaintiff and therefore the defendants have no right, title and interest in disputed land and that defendants be restrained from interfering with the possession of the plaintiff of suit land. The land in dispute originally belonged to defendants-respondents No.2 to 4 and it is purchased from them by plaintiff by registered sale deed dated 31st August, 1981. On or about one year prior to the filing of the suit aforesaid, the possession of the plaintiff was sought to be disturbed in suit land by the defendants and therefore, the plaintiff filed Regular Civil Suit No.349 of 1989 in the court of Civil Judge (J.D.), Anand, on or about 29th May, 1989. In the suit out of which these civil revision applications have arisen a declaration is sought to the effect that the sale deed dated 29th November, 1988, in favour of defendants-petitioners is illegal and not binding to the plaintiff. This suit is contested by defendants. They claimed themselves to be in actual and physical possession of the suit land. Many other pleas have been raised. The plaintiff filed application at ex.5 in the suit interalia seeking temporary injunction to the effect that pending the final disposal of the suit, the possession of the plaintiff of suit land be protected and the defendants be restrained from intervening with the said possession of the plaintiff in respect of the suit land. That application came to be rejected by Civil Judge (J.D.), Anand, under its order

dated 21st March, 1991. This order was challenged by plaintiff in Civil Misc. Appeal No.27 of 1991 in the court of District Judge, Kheda. The 2nd Extra Assistant Judge, Kheda, under it order dated 14.2.92, allowed the appeal and temporary injunction as prayed for has been granted in favour of plaintiff. The defendants-petitioners preferred Civil Revision Application No.590 of 1992 against that order of the first appellate court in this court which came to be dismissed by the court on 7th July 1992. The civil revision application was rejected, however, certain conditions have been imposed on the plaintiff. The order of this court is reproduced by petitioner in the memo of Civil Revision Application No.472 of 1994 in para-5. A review application filed by plaintiff for review of the order of this court dated 7.7.92 also came to be rejected on 30th July 1993.

#. It is the case of defendants-petitioners that as per the order of this court, the plaintiff is under an obligation to deposit a sum of Rs.7,000/= for every crop that he would be taken out of the suit land. The defendants-petitioners filed an application at ex.57 in the suit interalia pointing out that the plaintiff is taking in all three crops per year on the suit land but not depositing the amount of Rs.7,000/= per crop. In this application, the court has initially passed the order of maintaining status-quo. Then another application at ex.62 came to be moved by defendants-petitioners interalia raying therein to take necessary action for contempt of the court's order against the plaintiff. Then application at ex.69 was filed interalia stating that the crop of Bajri which came to be cultivated by plaintiff subsequent to the removal of the crop of Rajgara from the suit land is going to be ready for harvest within fifteen days and therefore, the plaintiff may be directed not to remove said crop without first depositing the amount of Rs.7,000/= in the court as per the directions of this court. On this application also, the court has passed the order to maintain status-quo. The grievance of the defendants-petitioners is that despite of all these orders, the plaintiff has taken the crop. The learned trial court, under its order dated 27th September, 1993, dismissed all these applications. The application ex.57 was dismissed on the solitary ground that the defendants-petitioners have failed to prove on the record of the case that the plaintiff in fact cultivated the crop of Bajri during monsoon season of 1992-93 and thereafter the crop of Rajgara has been taken. As a result of this finding, the two other applications were also rejected. Hence these

three civil revision applications before this court.

#. The learned counsel for the petitioners contended that it is a case where the plaintiff has committed contempt of the order of this court. In his submission, the plaintiff has admitted that crops were there on the land. The learned trial court, what he submits, instead of rejecting these applications, should have passed appropriate order directing thereunder, the plaintiff to deposit the amount.

#. On the other hand, the learned counsel for respondents opposed these revision applications. It is contended that the order of this court is very clear and liability or obligation of the plaintiff to deposit Rs.7,000/= in the court arises only where he takes the crop and not otherwise. It is a question of fact whether crop was taken or not. To make the plaintiff liable for deposit of Rs.7,000/= per crop, sine-qua-non is that crop has been taken is established. In case, the case of the palintiff is not accepted and when there is no perversity in the finding of fact of the court below, this court may not interfere with the same under Section 115 of the Civil Procedure Code. Lastly, it is contended that otherwise also, the order passed by the court below is not a case decided and these revision applications are not maintainable.

#. I have given my anxious and thoughtful considerations to the rival contentions made by learned counsel for the parties.

#. The order of this court passed in revision application earlier filed by petitioners is on the record. From this order, it is clear that the anxiety of the court and requirement felt was that for deprival of possession of the land, the petitioner may not suffer. To compensate for deprival of possession of land in case of their ultimate success in the suit, this condition of payment of Rs.7,000/= per crop has been laid down. The plaintiff has made attempt to take the benefit of the language of the order. Legally, if permissible, it could have been done. From the reading of the order passed in earlier civil revision application, I find that scope is available to the plaintiff to raise all these contentions. The plaintiff taking benefits of this order passed by this court raised all these contentions that the crop has not been taken by him. I find sufficient merits in the contention of Mr.Desai that whether the crop was taken or not is a question of fact and in case the court, after taking evidence of the parties is

satisfied and decides that the crop was taken, then only liability falls on the plaintiff for deposit of Rs.7,000/= per crop and not otherwise. But for this condition certainly this plea would not have been available to the plaintiff. In such matter and more so, knowing well how litigants act, the court has to take all the care so that this class of litigants may not have opportunity to find gap or loop-hole in the orders. The plaintiff has clearly made an attempt to take benefit of this language in the order. The impugned order passed by the court below cannot be said to be a case decided. These are only interlocutory discretionary orders in which under section 115 of the Civil Procedure Code, this court may not interfere. The suit is pending. It is a pure and single disputed question of fact and it has to be decided after taking evidence of the parties. It is true that taking advantage of the language of the order unscrupulous litigants may take advantage and benefits but the fault does not lie with the litigants. In a matter where a person is permitted to continue in possession of the disputed land, during the pendency of the suit whether he takes crop or not, a condition can legitimately be put for deposit of some amount. It is a question of fact and finding recorded by the court below cannot be be said to be perverse at this stage. When it is not accepted by the court that crop was taken, there is no question of committing contempt of the court's order by the plaintiff. Two other applications are ancillary to the main application and when the first application is to be dismissed two other will go automatically. Otherwise also, in case, the impugned orders are allowed to stand, the same will not occasion any failure of justice or will cause any injury to the defendants-petitioners for the obvious reason that they can raise this point in the suit and the court will frame the issue and decide the same along with all the issues. If ultimately what the defendants-petitioners are alleging is proved by them to the satisfaction of the court, the learned trial court will pass the order accordingly. Whatever findings given or recorded while deciding these three applications are only provisional and tentative.

#. In the result, these civil revision applications fail and the same are dismissed. However, dismissal of these revision applications will not come in the way of the petitioners to raise all these points by amending written statement and the learned trial court shall frame the issue and afford opportunity to both the parties to lead their evidence and to decide ultimately this aspect along with all other issues. Rule discharged, subject to these

directions. The civil revision applications arise from the suit of the year 1990. The learned trial court is directed to decide the suit itself within a period of six months from the date of receipt of writ of this order. Compliance of this order be reported to the court.

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(sunil)